IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MONA BURGOS Defendant Below-Appellant	)	
v.	)	**C.A. No. 2003-10-184**
SPALLCO ENTERPRISES, INC. Plaintiff Below-Appellee	)	

Submitted: July 31, 2006
Decided: August 17, 2006

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OPINION AND ORDER AFTER TRIAL

This is an appeal brought pursuant to 10 Del.C. §9570 et seq. Trial took place on April 28, 2006. The Court reserved decision and the parties submitted post-trial memoranda. This is the decision and final order by the Court.

In this action, Spallco Enterprises, Inc., Plaintiff-Below, Appellee, (hereinafter "Spallco") seeks to recover damages for breach of an automobile rental contract from Mona Burgos, Defendant-Below, Appellant, (hereinafter "Burgos").

On June 30, 2001, Burgos leased a vehicle from Spallco, a Maryland corporation, whose principal place of business is in Wilmington. The contract (Plaintiff Exhibit 1) offered three Collision Damage Waiver Options:

> "Insurance Deductible Collision Damage Waiver: ____ By initialing here, you agree to purchase our Insurance Deductible Collision Damage Waiver for a fee of $_____ per rental day. In return we will waive our right to collect from you up to the first $500 of Physical Damage to the Vehicle. You and your insurance company remain responsible for the balance of Damage to the Vehicle….
>
> Collision Damage Waiver:_____ By initiating here, you agree to purchase our Collision Damage waiver for a fee of $_____ per rental day. In return we will waive our right to collect from you for all Physical Damage to the vehicle except the first $250of physical damage. You remain responsible for the first $250 of damage to the Vehicle….
>
> Decline All Damage Waivers: ____ By initialing here, you decline both of the damage waivers above, and you agree to be responsible for all damage to, or loss of, the Vehicle, including loss of use and diminution of value."

Burgos initialed the space provided under "Insurance Deductible Collision Damage Waiver." Burgos initialed the contract in six other locations, including one next to the provision requiring her to report all accidents to the police, where no space was provided. Her initials do not appear in or anywhere near the space provided under "Collision Damage Waiver."

Steven Wallace ("Wallace"), a Spallco employee, assisted Burgos in filling out the contract. Wallace testified that Insurance Deductible Collision Damage Waivers are only sold to customers who indicate they already have collision coverage on the rental vehicle through their own auto insurance. The contract included a box that read: "YOU HAVE INSURANCE COVERING OUR VEHICLE" with space to initial "YES" or "NO." Burgos indicated "YES."

Before addressing the terms of the contract, Wallace reviewed Burgos' past rental history and noticed that in the past, Burgos had always purchased collision coverage for $14.99 per day. Wallace explained the terms of the contract to Burgos, and specifically questioned her election to purchase deductible coverage rather than collision coverage. Burgos indicated to Wallace that she had insurance coverage through Nationwide Insurance ("Nationwide") and provided her policy number.

On July 1, 2001, Burgos, while driving the rented vehicle, was involved in a motor vehicle accident. The rented vehicle was declared a total loss.

After the accident occurred, Barbara Spall ("Spall"), an officer of Spallco, reviewed the contract and made three alterations: (1) CHARGES: Collision Damage Waiver $14.99 was changed to $4.99 (2) CDW OPTIONS: the Insurance Deductible Damage Waiver price of $0.00 was changed to $4.99 (3) CDW OPTIONS: Collision Damage Waiver price of $14.99 was crossed out.

Nationwide, asserting that Burgos did not have collision coverage, declined to cover the damages. Spallco (after deducting the amount recovered from carrier for the other party involved in the accident) billed Burgos for the damages, including the market value of the vehicle, tow charges, and loss of use. Burgos declined to pay. Spallco filed this action in the Court below and Burgos has appealed the judgment against her.

The issue to be resolved is what was the contract between the parties when Burgos left the Spallco office on June 30, 2001, and whether Spallco can now claim damages for loss of the vehicle which was leased to Burgos that day.

The record clearly shows that the contract signed and initialed by Burgos was prepared by Spallco. The record is also clear that the contract introduced by Spallco in

court was not in all respects the same paper which Burgos signed that day. Ms. Spall admitted that changes were on the contract after it was signed by Burgos and before Spallco made demand on Burgos for damages.

Spallco argues that any changes to the contract are not an issue since the changes only reflect the agreement which the parties intended to make. Burgos contends to the contrary that the contract was altered without her agreement and Spallco cannot now seek damages on a contract which she did not sign.

The Court has some difficulty with Spallco's position. Based on the paper signed on June 30, 2001, Spallco cannot prevail in this action. If alterations to the paper are necessary to support Spallco's right to claim damages, then there is clearly an alteration of the contract.

It may be that Wallace was not precise in what he meant to fill in on the contract form. But what he did seems to reflect the understanding Burgos had when she signed the contract. Burgos gave Wallace the name of her insurance carrier and her insurance policy number. This data was printed on the contract form by Wallace. Wallace could have verified whether this insurance information was correct and in force. This transaction was not the first time Burgos leased a vehicle from Spallco. Wallace chose not to verify the insurance information. The changes made by Ms. Spall may have clarified Wallace's understanding of what he understood the contract was to provide (Ms. Spall testified that she spoke with Wallace before making the changes), but, they appear to have changed Burgos' understanding of what the contract was to provide.

Certain basic principles govern this case. The original contract signed by Wallace (for Spallco) and Burgos is open to different interpretations – as the parties contend – and

therefore it is ambiguous. Eagle Industries, Inc. v. DiVilbus Health Care, Inc., Del. Super, 702 A 2d 1228 (1997). Since Spallco prepared the agreement, such ambiguity must be resolved against it. Peden v. Gray, Del. Supr., 886 A 2d 1278 (2005); Hudson v. D & V Mason Contractors, Del. Super, 252 A 2d 166 (1969). Spallco's effort to clarify the ambiguity by changing or correcting the contract cannot support its claim.

CONCLUSION

The Court finds that there is no basis to support Spallco's claim against Burgos. Judgment is entered in favor of Burgos and against Spallco with costs assessed to Spallco.

IT IS SO ORDERED.

Judge Alfred Fraczkowski, Retired[1]

[1] Sitting by appointment pursuant to Del. Const.; Art IV §38 and 29 Del. C. §5610.